ALABAMA MIDDLE DISTRICT RECEIVED FRANK M. JOHNSON, JR., FEDERAL COURT HOUSE

2007 JUN 25 P 2: 41

CAREY A. FORTSON, SR., Plaintiff.)	DEBRA P. HACKET I. ULK U.S. DISTRICT COURT MIDDLE DISTRICT ALA
vs.)	
BUMBLE BEE FOODS, LLC; CON AGRA FOODS, LLC; BUREAU OF PRISON "BOP" FEDERAL PRISON CAMP COMMISSARY STAFF MR. WEST, MR. ALIMIN, MR. GORDON, MR. SMITH/SAFETY))	civil action no 2.07CU576-MM
MANAGER, and D. DREW, WARDEN,	,)	
Defendants.)	

COMPLAINT

COMES NOW, Carey A. Fortson, Sr., Plaintiff in this case, and for his Complaint against the above Defendants, show the court as follows:

1.

Plaintiff is an individual resident of the State of Alabama, who is presently incarcerated at the Federal Prison Camp, Maxwell Air Force Base located in Montgomery, Alabama 36112.

2.

This court has proper jurisdiction because Defendants Bumble

Bee Foods, LLC and Con Agra Foods, LLC sale their product in the Middle District of Alabama. Defendants "BOP" Federal Prison Camp Commissary Staff is located at Maxwell Air Force Base, Middle District of Alabama. Venue is proper because Plaintiff's injuries occurred as a result of Defendants defective product, in Montgomery, Montogmery, Alabama.

3.

On October 24, 2006, the Plaintiff purchased four (4) Kippered Snacks from the "BOP" Federal Prison Camp Commissary. See: Exhibit "A".

4.

On October 27, 2006, the Plaintiff had eaten most of the Kippered Snacks out of the can. Two hours or so later, Plaintiff started having severe abdominal pains and burning sensations.

Around 4:00 P.M. Count Time, Plaintiff stopped Officer Biggs, and explained to him the pains he was having, because of what he had eaten [Kippered Snacks]. Officer Biggs told Plaintiff to report to the pill line after count time to see the pharmacist. When the count was cleared, Plaintiff immediately went to the pill line line and explained to the Physician Assistant, Rodique, what he had eaten and was given some Pink Bismuth Tablets.

5.

On October 28, 2006, Plaintiff had to go back to the pill line a second time for more Pink Bismuth Tablets for his illnesses.

The United States Department of Health Register Nurse, J. Grindle, Grindle, asked the Plaintiff what he had eaten the day before. The The Plaintiff told him that he had eaten some Kippered Snacks. Then Plaintiff explained to the nurse the pains he started having after consuming the Kippered Snacks [abdominal pains and burning sensations]. Then the nurse gave the Plaintiff some Pink Bismuth Tablets.

6.

On October 29, 2006, the Plaintiff had to go back to the pill line a third time for his illnesses and was given more Pink

Bismuth Tablets. The Plaintiff then showed the nurse a portion of the defective product that was inside of the Kippered Snacks can.

See: Exhibit "B" & "Bl". The nurse told Plaintiff that he needed to see a doctor on Monday for some medication, because he couldn't give anymore.

7.

On October 29, 2006, the Plaintiff showed the defective product to Mr. Smith, Safety Manager/Commissary Staff, for the Federal Prison Camp. "He said that it was fungus." Mr. Smith asked the Plaintiff if he had anymore Kippered Snacks, and if so, did I wanted to exchange them for other items from the Commissary. The Plaintiff said yes, and Mr. Smith told Plaintiff to take them back to the Commissary, and he'll have Mr. West to exchange them.

On October 30, 2006, the Plaintiff went to sick call to see a doctor for his illnesses. The Plaintiff explain to the Physician Assistant, McNeil, what he had eaten [Kippered Snacks]. And few hours thereafter I started having abdominal pains and burning sensations. The Physician Assistant, McNeil, examined Plaintiff and prescribed some medications for him and ordered a blood test to determine what the Plaintiff had eaten. See: Exhibit "C" & "C1" & C2".

9.

On October 30, 2006, the Plaintiff took the defective product and the three (3) Kippered Snacks back to the Commissary to Mr. West, Commissary Staff, as directed by Mr. Smith on October 29, 2006. Mr. West offered to give the Plaintiff another Kippered Snacks can for the defective one; but Plaintiff told him no because it made Plaintiff sick. Mr. West told the Plaintiff to bring the three (3) Kippered Snacks back on Plaintiff's Commissary shopping day, and he'll exchange them for other items.

10.

On October 31, 2006, the Plaintiff took the three (3) Kippered Snacks back to the Commissary, and Mr. West substracted them and credited Plaintiff with other items. See: Exhibit "D".

On November 2, 2006, Commissary Staff, Mr. West and the United States Department of Health Register Nurse, Mr. Grindle, both wrote statements for the Plaintiff as to what they had observed inside Kippered Snacks can. See: "E" & "El".

12.

On November 21, 2006, Mr. Smith, Safety Manager/Commissary, for the Federal Prison Camp wrote the Plaintiff a statement as to what he had observed inside the Kippered Snacks can. See: Exhibit "F".

13.

On November 21, 2006, the Plaintiff was given some medication because Bumble Bee Foods, LLC and Con Agra Foods, LLC product had a bacteria in it that caused Plaintiff's intestines to become irritated and, they needed to be clam down. See: Exhibit "G".

14.

On November 30, 2006, Physician Assistant, McNeil, explained to Plaintiff that even though the Kippered Snacks had passed through, it will show up in the blood test. Then he prescribed Plaintiff some medications, because his blood test had tested positive for H. pylori, see Exhibit "C", a bacteria that was in the defective product from Bumble Bee Foods, LLC and Con Agra Foods, LLC that the Plaintiff had consumed. Exhibit "H" Medications.

On January 24, 2007, another blood test was done to determined whether or not the medications had gotten rid of the bacteria, H. pylori, that the Plaintiff had consumed from Bumble Bee Foods, LLC and Con Agra Foods, LLC defective product. The bacteria, H. pylori, is still active in Plaintiff blood. See: Exhibit "I".

16.

Defendants Bumble Bee Foods, LLC and Con Agra Foods, LLC both were negligence selling a defective product with a bacteria, H. pylori, that caused Plaintiff illnesses. Kippered Snacks Code number 5X1 172 0 20100 00048 9 best by date 1/1/2008. See: Exhibit "J" & "B" & "B1".

17.

Defendants Bumble Bee Foods, LLC and Con Agra Foods, LLC both were negligence failing to notify the Federal Prison Camp Commissary of their defective product with a bacteria, H. pylori, after they were notified by this Plaintiff before the filing of his Complaint. See: Exhibit "J" & "B" & "B1".

18.

On October 24, 2006, Defendants Bumble Bee Foods, LLC and Con Agra Foods, LLC both were negligence failing to ensure the Plaintiff safety from a defective product under government standards and regulations.

Defendants Federal Prison Camp Commissary Staff Mr. West,
Mr. Alimin, Mr. Gordon, and Mr. Smith/Safety Manager are negligence
continuing selling Defendants Bumble Bee Foods, LLC and Con Agra
Foods, LLC defective product after they had personally observed it
on October 29th [Mr. Smith] and 30th [Mr. West and Alimin] of 2006.
See: Exhibit "K" & "E" & "F".

20.

Defendants Federal Prison Camp Commissary Staff Mr. West, Mr. Alimin, Mr. Gordon, and Mr. Smith/Safety Manager are negligence for not notifying Defendants Bumble Bee Foods, LLC and Con Agra Foods, LLC on October 30, 2006, concerning their defective product that was distributed to the Federal Prison Camp Commissary for sales.

21.

Defendants Bumble Bee Foods, LLC and Con Agra Foods, LLC defective product caused the Plaintiff to have to take Ranitidine for an six (6) months period before another blood test can be done to determined whether or not the bacteria, H. pylori, is still present in Plaintiff blood. See: Exhibit "L"

DEMAND FOR JURY TRIAL

Pursuant to the Rule of Civil Procedure, Plaintiff hereby makes demand for a jury trial on all issues tribally by a jury.

WHEREFORE, Plaintiff prays that he have a Trial by Jury, and that he be awarded a judgment against the Defendants jointly and severally. (1) Negligence \$750,000; (2) Intentional Infliction of Emotional Distress \$750,000; (3) Negligence Infliction of Emotional Distress \$750,000; (4) Pain and Suffering \$750,000; and (5) Punitive Damages, since their conduct was fraudulent, intentional, reckless and malicious.

Carey A. Fortson, Sr., Pro-se

Federal Prison Camp Birmingham Unit D

Maxwell Air Force Base

Montgomery, Alabama 36112

June 22, 2007

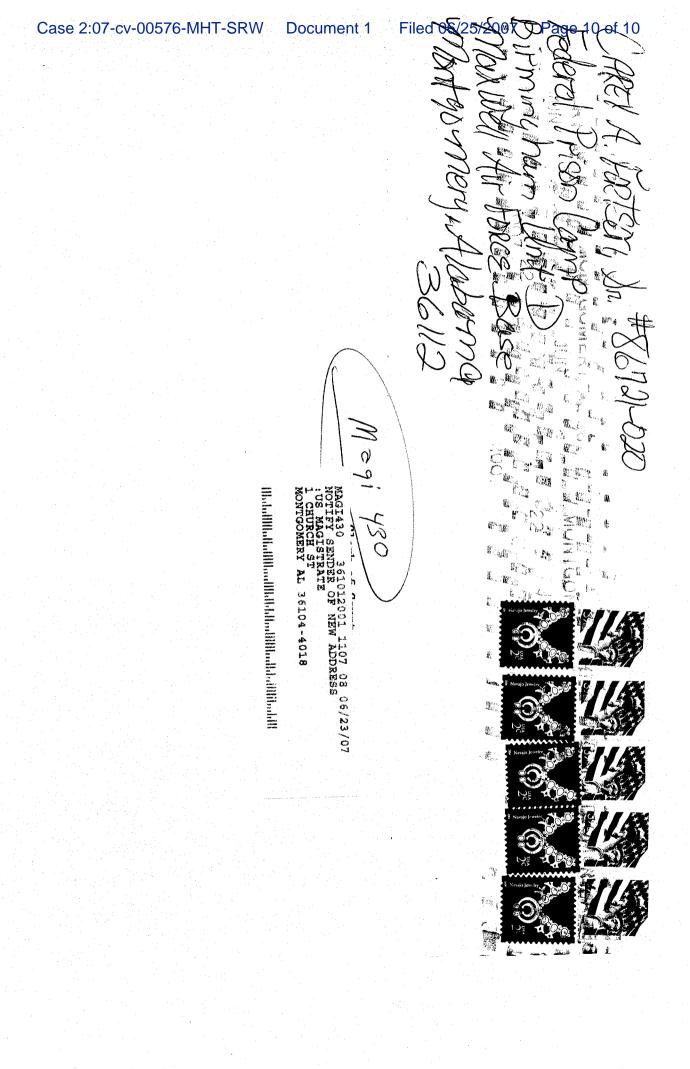
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Complaint has been mailed postage prepaid on this 222d day of June, 2007, to Frank M. Johnson, Jr. Federal Building United States Courthouse, One Church Street, P.O. Box 430 Montgomery, Alabama 36101

Bumble Bee Foods, LLC 9655 Granite Ridge Drive Suite 100 San Diego, California 92123

Con Agra Foods, LLC 7350 World Communication Drive Omaha, NE 68122

Bureau of Prison C/O D. Drew [Warden] 1001 Willow Street Montgomery, Alabama 36112









Fertson, CARCY	M	IEDICAL RESTR	RICTION
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AIL:	DATE	: _ 10 m 3	
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MEDICALLY UNASSIGNED/NO DUTY: Retu	ırn to work on:		•
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DEFINITIONS	S AND INSTRUCTION	NS A. I	VicNeil, PA-C
MEDICAL IDLE - Temporary disability not to exceed sever	n (7) days duration incl	luding weekends and noilda	Montgomery, Alays. Restricts inmate outs.
to the immediate vicinity of the patient's cubicle except for me (ABSOLUTELY NO RECREATIONAL ACTIVITY).	ears, rengious services,		· · · ·
to the immediate vicinity of the patient's cubicle except for me	tion, injury, or serious i	llness. Not to exceed thirty	(30) days, subject to NY WORK AREA

REGULAR DUTY - No restrictions to work or recreational activity.

REGULAR DUTY WITH RESTRICTIONS - Restricted from work around machinery, heights, heavy lifting, sports activities, etc., because of physical or mental condition. List limitation and effective time period.

WHITE: Medical Record CANARY: Unit PINK: Work Supervisor GOLDENROD: Inmate

PRINTED ON RECYCLED PAPER FCI-SST

EXHIBIT "C"

MON-MRF

FPC MONTGOMERY PHARMACY (334) 293-2171
BLDG 1249 - MAXWELL AFB, AL 36112
75718 A. MCNEIL 10/30/06
FORTSON, CAREY A 86721-020
FPC MONTGOMERY HOUSING - B04-022U
TAKE ONE CAPSULE BY MOUTH EACH DAY
30 MINUTES PRIOR TO THE FIRST MEAL

(1)Refills 10/30/2006 BSN RXExp 12/28/06 CAUTION: Federal/State law prohibits transfer of this drug to any person other than patient for whom prescribed.

Sales Invoice --S.B.U.-Montgomery FPC MAIN Account No. 86721020 MON6251 FORTSON, CAREY A 10/31/2006 01:55:17 PM TX#929000 25

BLGINNING BALANCES:

spending Limit Balance is \$225.60

Qty	Description	Price
- Promonent	KIPPERED SNACK Debit Card 39 CLNT STAMP POLAR FRUIT SALAD FILLETS OF MACKER DELMONTE RAISINS RAMEN CAJUN SHRIM HUNEY WHEAT BREAD HUNEY OAT CLUSTER ONIONS, JUMBO RANANAS	(\$3,30) \$3,00 \$1,95 \$5,75 \$5,75 \$1,25 \$1,26 \$2,60 \$1,00

Total

\$21.60

Charge 86721020

\$21.60

Items marked with * are Local Use Only

ENDING BALANCES:

Spending Limit Balance is \$206.95

Signature ALC SALES ARE FINAL

BP-S148.055 INMATE REQUEST TO STAFF CDFRM SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mr. West (Commissary Staff)	DATE: November 1, 2006		
FROM: Carey A. Fortson, Sr.	REGISTER NO.: 86721-020		
WORK ASSIGNMENT: Gunter AFB	UNIT: Birmingham Unit D		
SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.) Mr. West, I need for you to state in writing what you identified			
in the Beach Cliff Kippered Snacks can, on the portion of the fillets			
herring, October 30, 2006, (Monday) when I brought it to you at the			
commissary.			

Thank you,

(Do not write below this line)

DISPOSITION: On 10/30/06, Inmate Fortson did bring a mostly eaten can of Beach Cliff Kippered Snacks by the commissary to inspect. The one piece of fish in the can did have something unusual on it.

EXHIBIT "E"

Signature Staff Member

Date

11-2-06

West Record Copy - File; Copy - Inmate (This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86 and BP-S148.070 APR 94



BP-S148.055 INMATE REQUEST TO STAFF CDFRM

FEDERAL BUREAU OF PRISONS

.5. DEPARIMENT OF BOBITOR			
TO: (Name and Title of Staff Member)	DATE:		
Mr. Grindle (RN)	November 1, 2006		
FROM:	REGISTER NO.:		
Carey A. Fortson, Sr.	86721-020		
WORK ASSIGNMENT: Gunter AFB	UNIT: Birmingham Unit D		
SUBJECT: (Briefly state your question or concontinue on back, if necessary. Your failure taken. If necessary, you will be interviewed request.)	to be specific may result in no action being		
Mr. Grindle, I need for you to s	tate in writing what you identified		
in the Beach Cliff Kippered Snacks c			
herring, on October 29, 2006, (Sunda			
more Bismuth tablets.			
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	Thank you,		
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(Do not write	below this line)		
DISPOSITION:	1. I anas I apend can of		
on the remaining portion of his	eseted ment of opened end of to be A white nodular substance Linthe ear.		
	$oldsymbol{arphi}_{i}$, which is the state of the $oldsymbol{arphi}_{i}$		
DVDTDTM UD 111			
EXHIBIT "E-1"			
Signature Staff Member	Date		
	10/2 11/20		

Record Copy - File; Copy - Inmate (This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86 and BP-S148.070 APR 94



Case 2:07-cv-00576-MHT-SRW Document 1-10 Filed 06/25/2007 Page 1 of 1

U.S. Department of Justice

Federal Bureau of Prisons

RESPONSE TO INMATE REQUEST

From: Fortson, Carey A. 86721-020 B'Ham - D FPC Montgomery
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

RESPONSE/DISPOSITION

This is in response to your Inmate Request to Staff dated November 01, 2006. In the request you are asking for Mr. Smith, Safety Manager to write what he observed in the Beach Cliff Kippered Snacks can on Sunday, October 29, 2006.

I observed a can in a plastic bag. This can was opened and less than half full. The meat inside had a white fungus type growth on it.

I trust this information is responsive to your concerns.

SIGNATURE

FPC MONTGOMERY PHARMACY
BLDG 1249 - MAXWELL AFB, AL
76240 O. RODRIGUEZ
FORTSON, CAREY A
FPC MONTGOMERY HOUSING - B04-022U
TAKE TWO CAPSULES BY MOUTH FOUR
TIMES DAILY FOR 10 DAYS

DICYCLOMINE HCL* 10 MG CAP

(1)Refills 11/21/2006 BSN RXEXp 11/30/06
CAUTION: Federal/State law prohibits transfer of this drug to any person other than patient for whom prescribed.

FPC MONTGOMERY PHARMACY (334) 293-2171
BLDG 1249 - MAXWELL AFB, AL 36112
11/30/06
A. MCNEIL 86721-028
FORTSON, CAREY A
FPC MONTGOMERY HOUSING - B04-022U
FPC MONTGOMERY BY MOUTH TWICE
TAKE ONE TABLET BY MOUTH TWICE
DAILY

CLARITHROMY CIN 500 MG TAB

(0) Refills 11/30/2006 BSN RXExp 12/15
CAUTION: Federal/State law prohibits transfer of this drug
to any person other than patient for whom prescribed.

AMOXICILLIN 500 MG CAP #56

(0)Refills 11/30/2006 BSN REXEXP 12/13/06

CAUTION: Federal/State hav prohibits transfer of this drug

PPC MONTGOMERY PHARMACY (334) 293-2171
TAKE TWO CAPSULES BY MOUTH TWICE
FOR MONTGOMERY HOUSING - B04-022U
FPC MONTGOMERY HOUSING - B04-022U
TAKE TWO CAPSULES BY MOUTH TWICE
TORTOOL CAPSULES BY MOUTH TWICE

U.S. MEDICAL CENTERS FOR FEDERAL PRISONERS Laboratory, 1900 W. Sunshine SPRINGFIELD, MISSOURI 65808 (417) 862-7041

SENSITIVE BUT UNCLASSIFIED --***

FINAL REPORT

107y

Register Number: 86721-020 Age . Name : FORTSON, CAREY Sex

Location : FPC MONTGOMERY (MON) Room

Admit. Physician: DR. GARCIA-BRENES Order. Physician: DR. GARCIA-BRENES Accession Number: 1770

Collected : 01/24/07 @ 12:00 by: RE

Test	Result		Flag	Reference Range/Units	Tech
LIPID PROFILE					
COMP PROFILE					
Glucose	78			70 - 110 mg/dL	LN RY
Urea Nitrogen	15			7 - 22 mg/dL	LN RY
Creatinine	1.1			0.6 - 1.6 mg/dL	LN RY
SodiumI	144			137 - 148 mmol/L	LN RY
Potassium	5.5		HI	3.5 - 5.0 mmol/L	LN RY
Chloridel	104			99 - 114 mmol/L	LN RY
Calcium1	9.8			8.5 - 10.9 mg/dL	LN RY
Total Protein	8.6		HI	6.0 - 8.2 g/dL	LN RY
Albumin	5.0			3.6 - 5.1 g/dL	LN RY
Alkaline Phos.	86			41 - 133 U/L	LN RY
AST (SGOT)	53			11 - 55 U/L	LN RY
Total Bilirubir	11.4	, A	HI	0.2 - 1.3 mg/dL	LN RY
Cholesterol	(212)	/3	HI	50 - 200 mg/dL	LN RY
Triglyceride	73	1,00		10 - 150 mg/dL	LN RY
ALT1 (SGPT)	91)	V_{i}	. HI	11 - 66 U/L	LN RY
dHDL	(65)		НІ	40 - 60 mg/dL	LN RY
LDLC	(132)		HI	0 - 130 mg/dL	HS RY
Chol/dHDL Ratio	3.3	X MM, ESS		0.0 - 4.0	LN RY
PSA/Pros.Spec.A	lg 0.93		- L	0.03 - 4.00 ng/ml	TA RY
H. pylori Ab	Positive		۶	Negative	RS RY
		1 1 1 Kers 3		1102001.40	K5 K1
		1 16			
		A Comment			

Legend

LO=Low AL=Alarm Low HI=High AH=Alarm High AB=Abnormal EL=Less than Clinically Reportable Range EH=Greater than Clinically Reportable Range

: FORTSON, CAREY

Register Number: 86721-020

Printed : 01/26/2007 @ 11:08 Location : MON Page : 1 of 1

EXHIBIT "I"



November 1, 2006

Bumble Bee Foods, LLC
P.O. Box 85362
San Diego, CA 92186-5362
9655 Granite Ridge Drive, Suite 100
San Diego, CA 92123
(858) 715-4000 Ph.
(858) 560-6045 Fx
http://www.BumbleBee.com

Mr Carey Fortson Sr. Federal Prison Camp Birmingham Unit D Maxwell Air Force Base Montgomery, AL 36112

Dear Mr Fortson Sr.:

Thank you for returning the fereign contaminant you found in our Beach Cliff Kippered Snacks.

When sardines are processed, only the head, gill and tail portions are removed; they are not gutted or deboned. We are however, continually striving to keep the presence of any visceral and /or fish eggs material to a minimum. This practice is in compliance with government standards. Furthermore, we have established very demanding inspection procedures to ensure that acceptable quality standards are maintained and all relevant government regulations adhered to.

Customer satisfaction is important to our company. We appreciate your courtesy in bringing this matter to our attention. We hope you will continue to use and enjoy our products by redeeming the enclosed coupons.

Sincerely.

Letty L. Perez

Consumer Affairs Correspondent

000263192A

Enclosure:

6 Beach Cliff - Any Beach Cliff Product

EXHIBIT "J"















Baira lovelco — 6,8.4. — Muragorary EDC Maria

Action to ESTERNA

AND SATERATE ISSUES AT PRETERIORS

HELINING BALANCES:

Spending Limit Batanon in 1260.00

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Dty	Description	Price
The same and speed from the same	Z CENT STAMP KIPPERED SMACK DELMONTE MAISTNS GUICK DATS CRUNCHY P/BTR COUNTRY EDOKIE SA DUGACELL AGO	\$0.49 \$2.20 \$1.90 \$1.75 \$2.20 \$2.20
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Charge 85721020

\$11.40

items marked with W are Local Use Doly?

ENDING BALANCES:

Spanding Liest Belance is keny be

Signeture RI SALES AM FINE





EXHIBIT "K"

\$ 000

FPC MONTGOMERY PHARMACY
BLDG 1249 - MAXWELL AFB, AL
79654 O. GARCIA-BRENES
03/29/07 FORTSON, CAREY A 86721-020 FPC MONTGOMERY HOUSING - B04-022U TAKE TWO TABLETS BY MOUTH TWICE DAILY

RANITIDINE 150 MG TAB #60

(11)Refills 03/29/2007 BSN RXEXP 09/24/07
CAUTION: Federal/State law prohibits transfer of this drug
to any person other than patient for whom prescribed.